



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

&

HON'BLE SHRI JUSTICE B. P. SHARMA

ON THE 14th OF NOVEMBER, 2025

FIRST APPEAL No. 789 of 2022

SMT. PARVATI SURYAVANSHI

Versus

OMPRAKASH SURYAVANSHI

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Appearance:

Shri Sanjay Gupta - Advocate for the appellant.

Shri Yashovardhan Shukla - Advocate for the respondent.
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JUDGMENT

Per. Justice Vishal Dhagat

Appellant has filed this first appeal under Section 19 of the Family Courts Act, 1984 challenging judgment and decree dated 13.05.2022 passed by Principal Judge, Family Court, Chhindwara (MP) in HM Case No.260/2019.

2. By impugned judgment and decree, petition filed by appellant under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 was dismissed.

3. Learned counsel appearing for appellant submitted that marriage between appellant and respondent was solemnized on 24.05.2022 in accordance with Hindu rites and rituals at Chhindwara. From wedlock two daughters were born namely Shrishti and Divyani. They are in custody of husband. Appellant filed divorce petition on ground of cruelty and desertion.



Respondent demanded dowry and harassed her. She was tortured and beaten up and character assassination was also made. She was forcibly sent to her parents house along with respondent's nephew. Husband used to drink liquor and assault her. It is submitted that judgment and decree dated 13.05.2022 suffers from infirmity and is erroneous in law and contrary to facts. Trial Court ignored the fact that respondent's family members were demanding dowry and respondent assaulted her. Respondent drove appellant out of house in year 2009 and thereafter in 2016. She also filed case for maintenance but same was withdrawn considering future of daughters. Trial Court had ignored the pleadings and evidence available on record, therefore, judgment and decree passed by trial Court may be set aside and decree of divorce may be granted.

4. Learned counsel appearing for respondent submitted that respondent is taking care of both daughters. Appellant had done second marriage on 25.01.2018 without obtaining divorce, therefore, complaint case under Section 494/34 of the IPC was filed against her second husband namely Shiv Shankar Chourasia. Both daughters had deposed that appellant used to treat them with cruelty. Petition for divorce was filed on false ground. It was appellant who was cruel towards respondent. No case is made out for interference in judgment and decree passed by trial Court and first appeal may be dismissed.

5. Heard the counsel for the parties.

6. On going through the records of the case, it is found that joint petition for divorce was preferred by appellant and respondent under Section



13-B of the Hindu Marriage Act, 1955. In said petition, it was pleaded that petitioner and respondent are living together in marital ties due to social compulsion. There is no coordination and there is ideological differences between them. There is bitterness and they are living in constant tension, therefore, divorce may be granted to them. Respondent as per agreement had paid Rs.50,000/- by Cheque dated 05.11.2014 drawn of Bank of Baroda, Chhindwara and Rs.50,000/- was to be given on date of evidence. Said petition was withdrawn on 23.02.2015. Due to conciliation, parties settled their differences and started living together. Application for grant of maintenance was also withdrawn. After their living together for some time, respondent is said to have driven appellant out of house in year 2016. Thereafter, she had done second marriage with Shiv Shankar Chourasiya on 21.05.2018 and she wants divorce from him.

7. Respondent had stated that appellant used to treat daughters with cruelty. She left the house in year 2010 along with her jewellries and Rs.1,50,000/-. False case under Section 498-A of the IPC was filed against him by appellant. Appellant had given a notice for divorce to him through counsel and they had entered into an agreement i.e. "Talaknama". Since, "Talaknama" was not in accordance with law, therefore, petition under Section 13-B of the Hindu Marriage Act, 1955 was filed and later, same was withdrawn. Appellant is married. She married to one Shiv Shankar Chourasiya in accordance with custom of Arya Samaj. Over said incident, he had filed complaint case against appellant under Section 494 of the IPC.

8. Trial Court considering aforesaid pleadings and evidence held that



second marriage of appellant is invalid as she has done second marriage during subsistence of first marriage and is having living spouse. Second marriage was done on 21.05.2018. Trial Court on basis of second marriage has drawn presumption that appellant is having adulterous life and she cannot be given advantage of her own misdoing. Granting divorce to petitioner/plaintiff will be like grating premium on misdeeds and due to said reason petition for divorce was dismissed.

9. Considering totality of facts, evidence and circumstances of case, it is found that appellant was married to respondent on 24.05.2002. They lived together till 2010 then they got separated. Petition for divorce under Section 13-B of the Hindu Marriage Act, 1955 was filed and during pendency of petition. Parties ended their dispute and agreed to live together, therefore, said petition was withdrawn. They lived together for six months but were not able to revive their relationship as husband and wife. Appellant again got separated on 23.06.2016. After separation, appellant did second marriage on 21.05.2018. After doing second marriage, appellant has withdrawn case of maintenance under Section 125 of the Cr.P.C. and not claiming further maintenance from respondent. She is living her life in an invalid marriage with Shiv Shankar Chourasiya. Respondent is having separate life along with his daughters. There is complete breakdown of marriage between appellant and respondent. No purpose will be served if petition is dismissed on ground of fault of appellant. Appellant had faulted in doing second marriage during subsistence of first marriage.

10. Question whether second marriage was valid or void was not an



issue before trial Court. Issue under consideration was whether respondent treated appellant with cruelty and due to said reason appellant is entitled to get decree of divorce.

11. Decree of divorce can be granted under Section 13 of the Hindu Marriage Act, 1955 on ground enumerated under said provision if other party is at fault. Irretrievable breakdown of marriage is not one of the ground provided in Section 13 of the Hindu Marriage Act, 1955. Court cannot shut its eyes to practical difficulties and problems of parties. If divorce is not granted in cases of irretrievable breakdown of marriage then it will amount to further pushing party towards continuous pain and suffering. Irretrievable breakdown of marriage is a species within genus of cruelty. Whenever, there is Irretrievable or complete breakdown of marriage then both parties are under pain and suffers day to day cruelty as they were not permitted to exercise their choices and option to choose their partners in life. Other party opposes the prayer for divorce despite their being no possibility of their living together. Said conduct of party in deriving pleasure from difficulties and tension of other party also amounts to cruelty.

12. In view of aforesaid discussion, petition filed under Section 13(1) (ia) of the Hindu Marriage Act, 1955 is *allowed* on ground that respondent is treating appellant with cruelty in not giving her option to live her life freely according to her choice which is fundamental right of appellant and unnecessarily opposing petition for divorce when she is already living with another man though marriage between them is invalid. Marriage dated 24.05.2002 between appellant and respondent is dissolved.



13. Appellant will not have any right of alimony against respondent nor she can make any claim of property of respondent.

(VISHAL DHAGAT)
JUDGE

(B. P. SHARMA)
JUDGE

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